

REMARKS

This Response is submitted in reply to the Office Action mailed on July 28, 2009. Claims 1-47 are currently pending. Claims 1-9, 11, 15, 25, 29, 31, 34, 36, 38, 41-43 and 45-47 have been amended to address informalities.

The Office Action is a restriction and election of species requirement. With respect to the restriction requirement, restriction is required among three alleged groups of inventions: Group I (Claims 1, 8-9, 33, 36-37 and 41); Group II (Claims 2-7 and 42-44); and Group III (Claims 10-32, 34-35, 38-40 and 45-47). Applicant provisionally elects Group III (Claims 10-32, 34-35, 38-40 and 45-47) directed to the nutritional or pharmaceutical composition, with traverse, subject to the Rejoinder provisions of MPEP 821.04. Applicant expressly reserves the right to file one or more divisional applications directed to the non-elected claims.

Applicant respectfully traverses the Patent Office's assertion that Groups I-III are not directed to a single inventive concept. Applicant respectfully submits that each of the independent claims is generally directed to a  $\gamma$ -glutamyl-peptide. The  $\gamma$ -glutamyl-peptide can be used in the preparation of a medicament or nutritional formulation for humans or animals or for the treatment, testing for or prophylaxis of a disease or condition that is characterized by increased bone resorption as recited by the present claims. As a result, the use of a  $\gamma$ -glutamyl-peptide is the single general inventive concept that is shared by the pending claims. Moreover, Applicant respectfully submits that any anticipation rejections will be dealt accordingly with in response to the first substantive Office Action for this case.

The Office Action also requires an election of species. In this regard, the Patent Office states that the patent application includes a number of patentably distinct species. Specifically, Applicant is required to elect a single disclosed species of a  $\gamma$ -glutamyl-peptide, a calcium source, a carbohydrate, a fat source, a nitrogen source, a vitamin, a mineral, a trace element, a fiber, a flavor, and Allium.

Applicant does not believe this election of species requirement is proper and traverses same. First, Applicant believes it would unduly limit Applicant's invention to make the election to specific species of each component. Moreover, Applicant respectfully submits that searching the additional components will not place an undue burden on the Patent Office. Instead, the Patent Office needs to find only a single species or a single component in the case of the

Markush group of Claim 20 for the claim to be anticipated. The Patent Office does not need to find every possible species of each component.

Finally, Applicant does not believe that this election of species will reduce the burden of examination to the Patent Office. Instead, Applicant will be required to file individual applications directed to the multitude of the claimed species, which will only result in the Patent Office receiving an overload of additional applications directed to subject matter that could have easily been searched or handled in the presently pending application.

In the spirit of cooperation, Applicant respectfully elects the species for each of the components as follows:

$\gamma$ -glutamyl-alkyl-cysteine sulfoxide as the  $\gamma$ -glutamyl-peptide;  
skim milk powder as the calcium source;  
maltodextrins as the carbohydrate;  
omega-6 polyunsaturated fatty acid source as the fat source;  
soy bean derived protein as the nitrogen source;  
Vitamin A as the vitamin;  
potassium as the mineral;  
magnesium as the trace element;  
gum arabic as the fiber;  
vegetable flavors as the flavor; and  
Allium cepa as the Allium.

The Director is authorized to charge any additional fees that may be required, or to credit any overpayment to Deposit Account No. 50-4498 in the name of Nestle Nutrition.

Respectfully submitted,

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Dated: August 11, 2009